

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Paul Michelotti,

Plaintiff,

v.

Case No. 14-14441

Robert Bosch LLC,

Sean F. Cox

United States District Court Judge

Defendant.

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**ORDER DENYING**  
**MOTION TO DISMISS AMENDED COUNTERCLAIMS**

Acting *pro se*, Plaintiff Paul Michelotti (“Michelotti”) filed this action against Robert Bosch, LLC (“Bosch”), alleging patent infringement.

On March 11, 2015, Bosch filed a counterclaim along with its Answer and Affirmative Defenses. (Docket Entry No. 8).

On March 30, 2015, Michelotti filed an “Answer And Motion To Dismiss Counterclaims.” (Docket Entry No. 9). Thereafter, on April 16, 2015, Bosch amended its Counterclaims. (Docket Entry No. 13). Bosch’s amended counterclaims are: 1) “Count I – Invalidity of U.S. Patent No. 6,023,221”; and 2) “Count II – Noninfringement of U.S. Patent No. 6,023,221.”

On April 28, 2015, Michelotti filed an “Answer And Motion To Dismiss Amended Counterclaims.” (Docket Entry No. 15). Bosch filed a response on May 2, 2015. Michelotti filed a Reply Brief on May 14, 2015. Thus, the parties have briefed Michelotti’s Motion to Dismiss Amended Counterclaims.

The Court finds that oral argument would not aid the decisional process. *See* Local Rule 7.1(f)(2), U.S. District Court, Eastern District of Michigan. The Court therefore orders that the motion will be decided without a hearing. As such, **IT IS ORDERED that the hearing previously scheduled for July 16, 2015, is CANCELLED.**

Michelotti's "Motion"<sup>1</sup> consists of four paragraphs wherein he asserts that the allegations in Bosch's amended counterclaims "have not been proven," and that Bosch has "provided denials but no evidence in support of" its amended counterclaims. Not only are those arguments undeveloped in the motion, but such arguments are not properly before the Court in motion to dismiss brought prior to discovery.

In his motion, Michelotti also asserts that "[c]hallenges to patentability must be heard by the Patent Trial and Appeal Board in accordance with 35 U.S.C. § 6 and applicable federal regulations." (Docket Entry No. 15). Michelotti has not developed this argument in his motion and it is not clear what he is attempting to argue. To the extent that he asserts that this Court lacks jurisdiction over patent claims, the argument is without merit. *See* 28 U.S.C. § 1338 ("The district courts shall have original jurisdiction of any civil action arising under any act of Congress relating to patents, plant variety protection, copyrights and trademarks.")

In his Reply Brief, Michelotti appears to make additional arguments that were not included in his motion. (Docket Entry No. 18). Arguments made for the first time in a reply brief are generally not considered because such a practice deprives the non-moving party of its opportunity to address those arguments. *See, e.g., Wright v. Holbrook*, 794 F.2d 1152, 1156 (6th

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<sup>1</sup>In violation of Local Rule 7.1, Michelotti did not file a brief along with the motion. The motion appears to be more akin to a statement of affirmative defenses than an actual motion to dismiss under Fed. R. Civ. P. 12(b)(6).

Cir. 1986); *Ryan v. Hazel Park*, 2007 WL 1174906 (E.D. Mich. 2007). This Court declines to address any argument raised by Michelotti for the first time in his Reply Brief.

Accordingly, **IT IS ORDERED** that Michelotti's Motion to Dismiss Bosch's Amended Counterclaims is **DENIED**.

**IT IS SO ORDERED.**

Dated: July 2, 2015

S/ Sean F. Cox

Sean F. Cox  
U. S. District Judge

I hereby certify that on July 2, 2015, the foregoing document was served on counsel of record via electronic means and upon Paul Michelotti via First Class mail at the address below:

Paul Michelotti  
2850 Banyan Boulevard Circle  
Boca Raton, FL 33431

S/ J. McCoy

Case Manager